

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

WILLIAM E. SMITH,

Plaintiff,

v.

CIVIL ACTION NO. 5:07-cv-00493

MATT J. JARVIS and
THE MOUNT HOPE POLICE DEPT.,

Defendants.

MEMORANDUM OPINION AND ORDER

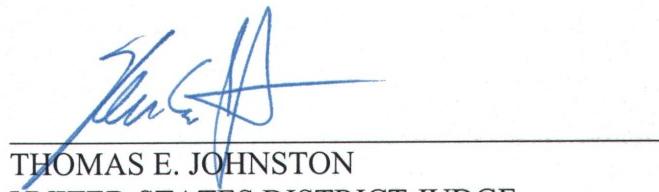
Pending before the Court is Defendant Mount Hope Police Department's (MHPD) Motion to Dismiss [Docket 10]. By Standing Order entered on August 1, 2006, and filed in this case on August 10, 2007, this action was referred to United States Magistrate Judge Mary E. Stanley for submission of proposed findings and a recommendation (PF&R). Magistrate Judge Stanley filed her PF&R [Docket 23] on July 22, 2008, recommending that this Court **FIND** that Plaintiff's complaint alleges facts sufficient to allow his § 1983 claim to proceed against MHPD and **DENY** MHPD's motion to dismiss.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United*

States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R were due in this case by August 4, 2008. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the recommendation contained in the PF&R [Docket 23], **FINDS** that Plaintiff’s complaint alleges facts sufficient to allow his § 1983 claim to proceed against MHPD, **DENIES** MHPD’s Motion to Dismiss [Docket 10], and **REFERS** the case back to Magistrate Judge Stanley for further proceedings consistent with this opinion. The Court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: August 29, 2008



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE